
Remarks

Claims 1-3, 5-12 and 14-47 are presented for consideration.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the preceding amendments and following remarks is respectfully requested.

Revised drawings are attached to this correspondence. The drawings include amendments removing descriptive text and to address the items noted for FIGS. 1A, 1D, 1E, 1F and 5A-7. Applicants thank the Examiner for the detailed comments regarding the drawings. Red ink identifies the proposed change. Several of the proposed changes involve removal of text or marks. These items are not identified by red ink.

With respect to the number 12, 14, 16, 28, 30, 32, 34, 38, 42, 46, 62 in the specification at pages 11-18 and numbers 43, 110, 112, 114 and 116 at page 20, these are inadvertent errors that have been deleted from the specification by amendments provided above.

With respect to the objection to the drawings under 37 CFR 1.83(a), Applicants respectfully note that in claims 1 and 17, only some of the objected features are present and these features are present in only the preamble of the claim. As for the backsheet, that feature is recited in claims 1 and 17 and is described in FIG. 1F. Claims 10 and 27 are amended to address the objections. Moreover, Applicants respectfully submit that FIGS. 1 D through 1 F depict elements ascertainable to one of ordinary skill in the art as garment adhesive and fastener components. Exemplary fastener components are also represented in detail in FIGS. 2A through 4. Accordingly, the objection to the drawings under 37 CFR 1.83(a) is obviated and should be withdrawn.

The reference to prior applications is amended as suggested by the Examiner

Amendments to other portions of the specification address the objections raised by the Examiner.

With respect to the objections to claims 1-5, 14, 19, 25-28, 30-38 and 43-46, these claims have been amended to correct the items identified by the Examiner. The Applicants thank the Examiner for pointing out the items requiring correction.

Claims 1-9, 21-29, 32-34, 36-38 and 4 stand rejected under 35 U.S.C. 112, second paragraph.

Claims 1, 21, 32, 36 and 40 are amended to clarify specific details about the fastener and wings. It is believed these amendments properly address the rejections.

Claims 1-3, 6-12, 15-20 and 48 stand rejected under 35 U.S.C. 102(b) as anticipated by WO 98/15201 to Provost et al. (Provost '201). Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

It is the Applicants' position that Provost '201 fails to teach or suggest a fastening system in which the first fastener component and the second fastener component each have an axis of substantially maximal engagement. The present claims require this feature now that the subject matter of claim 4 is incorporated into independent claim 1 and the subject matter of claim 13 is incorporated into independent claim 10. The rejection of claim 48 is moot because that claim is cancelled.

While Provost '201 discloses loop members, Applicants' representative has been unable to locate teaching or suggestion of a loop member or cooperating fastener component that is substantially non-isotropic and has an axis of substantially maximal engagement.

Accordingly, it is the Applicants' position that claims 1-3, 5-12 and 15-20 are novel and patently distinct over Provost '201.

Claims 1, 4, 5, 10, 13-14 and 21-47 stand rejected under 35 U.S.C. 102(e) as anticipated by US 2003/0004484A1 to Hammons et al. Applicants respectfully traverse this rejection to the extent it might apply to the claims as amended.

Hammons et al. fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Hammons et al. discloses use of a mechanical fastening system on the wings of a sanitary napkin, it also teaches using an adhesive fastening system on the wings and fails to distinguish between adhesives and mechanical interengaging fastening systems. Importantly, such adhesive systems lack a first fastener component and a cooperating fastener component that become interengaged. Moreover, such adhesive systems lack such fastener components that are adapted to become more interengaged as the article is worn.

It is the Applicants' position that Hammons et al. does not necessarily possess the characteristics of the claimed invention at least because Hammons et al. discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention.

Applicants' representative has reviewed Hammons et al. disclosure of a mechanical fastening system and has been unable to locate any teaching or suggestion that such a mechanical fastening system has any particular axis of engagement for its first fastener component (i.e., hook component) or is in any way adapted to become more interengaged as the article is worn. While it may be argued that Hammons et al. (by way of US Patent No. 5,032,122 to Noel et

al. at col. 12, lines 15-35) disclose that a loop component of a hook and loop fastening system may be oriented either parallel to the direction of shear forces applied during use, the Applicants' representative has reviewed Noel et al. and has been unable to locate teaching or suggestion that its hook component has any particular axis of engagement or that the fastening system is adapted in any way to become more engaged as the article is worn.

To the limited extent that the teachings of Noel et al. regarding loop material can be applied to the present invention, a fair reading of col. 12, lines 24-31 indicates that reference actually teaches away from the present invention. Noel et al. teaches that its loop materials should be oriented to provide the maximum peel and shear force resistance. The Applicants interpret this teaching as meaning the maximum peel and shear force resistance as is conventionally measured. That is, the maximum peel and shear force resistance at the initial application or engagement of the elements of the fastening system before wear. Applicants respectfully direct the Examiner's attention to Table 2 at page 29 of the Applicants' specification which highlights that the orientation of the hook elements providing the maximum peel and shear force resistance before wear is not the orientation that provides the maximum values as the article is worn.

In view of the fact that Hammons et al. discloses embodiments of sanitary napkins having fastening systems that cannot possess the characteristics of the claimed invention and that lack of any teaching or suggestion that such a mechanical fastening system having any particular axis of engagement or is in any way adapted to become more interengaged as the article is worn, it is the Applicants' position that the products disclosed by Hammons et al. cannot possess the characteristics of the claimed invention.

It is also the Applicants' position that the claimed invention is patentably distinct and non-obvious over the teachings of Hammons et al. for at least the same reasons.

Claims 1-48 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/37,278 (published Application No. 2003/0040730).

Applicants respectfully request this rejection be held in abeyance with respect to the present application until such time that allowable subject matter is identified.

According to the Examiner, commonly assigned '278('780) would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned application qualifies as prior art under 35 U.S.C. 102 (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. To resolve this issue, the Examiner requires the assignee under 37 CFR 1.78 and 35 U.S.C. 132 to either show that the conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter.

The below-signed attorney of record hereby makes a statement evidencing common ownership in accordance with MPEP §706.02(l)(2) regarding copending Application No. 10/37,278 (published Application No. 2003/0040730) and the present application:

STATEMENT OF COMMON OWNERSHIP

U. S Patent Application No. 10/37,278 (published Application No. 2003/0040730) was, at the time the invention of U.S. Patent Application Serial No. 10/037,287 was made, owned by Kimberly-Clark Worldwide, Inc.

According to MPEP §706.02(l)(2), this statement alone is sufficient evidence to disqualify a patent or patent application from being used in a rejection under 35 U.S.C. 103(a) against the claims of currently pending application.

All outstanding issues raised by the Examiner having been addressed, it is respectfully submitted that the present application is in condition for allowance. Action to such effect is therefore respectfully requested.

The Examiner is invited to telephone the undersigned should any minor issues remain after consideration of the present amendment. The undersigned may be reached at (770) 587-8635.

Please charge any prosecutorial fees that are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Karl V. Sidor, hereby certify that on February 13, 2004 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: _____

Karl V. Sidor